

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ANDRE JACKSON,

Petitioner,

v.

9:16-CV-626 (NAM/DJS)

DANIEL MARTUCELLO,

Respondent.

Appearances:

Andre Jackson,
Petitioner *pro se*
13-B-0455
Coxsackie Correctional Facility
P.O. Box 999
Coxsackie, New York 12051

Hon. Barbara D. Underwood,
Attorney General for the State of New York
Matthew B. Keller,
Assistant Attorney General
Attorneys for Respondent
28 Liberty Street
New York, New York 10005

Hon. Norman A. Mordue, Senior United States District Judge:

MEMORANDUM-DECISION AND ORDER

On June 2, 2016, Petitioner Andre Jackson filed a Petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his conviction and sentence in New York state court on weapons charges in violation of N.Y. Penal Law §§ 265.02, 265.03. (Dkt. No. 1). Respondent filed an answer and memorandum of law in response, along with the state court record. (Dkt. Nos. 5, 6, 7). This matter was referred to United States Magistrate Judge Daniel J. Stewart who,

on September 18, 2018, issued a Report-Recommendation recommending that the Petition be denied and dismissed, and that a certificate of appealability be denied. (Dkt. No. 9). Magistrate Judge Stewart advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 9, pp. 12–13). No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts it in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 9) is **ADOPTED** in its entirety; and it is further

ORDERED that the Petition (Dkt. No. 1) is **DENIED AND DISMISSED**; and it is further

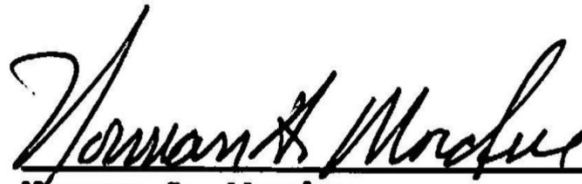
ORDERED that no Certificate of Appealability (“COA”) shall issue because Petitioner has failed to make “a substantial showing of the denial of a constitutional right” as required by 28 U.S.C. § 2253(c)(2); and it is further

ORDERED that any further request for a Certificate of Appealability must be addressed to the Court of Appeals (Fed. R. App. P. 22(b)); and it is further

ORDERED that the Clerk serve a copy of this Memorandum-Decision & Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: October 25, 2018
Syracuse, New York


Norman A. Mordue
Senior U.S. District Judge

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